

RBS and RUS, USDA

§ 4279.226

(2) The holder of a guaranteed portion shall have all rights of payment, as defined in the loan note guarantee, to the extent of the portion purchased. Even if all or a portion of the loan note guarantee has been sold to a holder, the lender will remain bound by all obligations under the loan note guarantee, Lender's Agreement, and Agency program regulations.

(3) The lender must be shown as an additional insured on insurance policies (or other risk sharing instruments) that benefit the project and must be able to assume any contracts that are material to running the project, including any feedstock or off-take agreements, as may be applicable.

(4) If a lender does not satisfactorily comply with the provision found in § 4279.256(c) and such failure leads to losses, then such losses may not be recoverable under the guarantee.

(5) When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones. The lender will reimburse the Agency for any payments the Agency makes to a holder of lender's guaranteed loan that, under the Loan Note Guarantee, would not have been paid to the lender had the lender retained the entire interest in the guaranteed loan and not conveyed an interest to a holder.

(j) *Sale or assignment of guaranteed loan.* The provisions of § 4279.75 apply to this subpart.

(k) *Minimum retention.* The provisions of § 4279.77 apply to this subpart, except that the lender is required to hold in its own portfolio a minimum of 7.5 percent of the total loan amount.

(1) *Replacement of document.* Documents must be replaced in accordance with § 4279.84, except, in § 4279.84(b)(1)(v), a full statement of the circumstances of any defacement or mutilation of the Loan Note Guarantee or Assignment Guarantee Agreement would also need to be provided.

§§ 4279.203–4279.223 [Reserved]

§ 4279.224 Loan processing.

Processing of Biorefinery Assistance Guaranteed loans under this subpart shall comply with the provisions found in §§ 4279.107 through 4279.187 of this chapter, except as provided in the following sections.

§ 4279.225 Ineligible loan purposes.

For the purposes of this subpart, the ineligible purposes identified in § 4279.114(b), (c), and (p) do not apply to this subpart.

§ 4279.226 Fees.

Fees will be determined according to the provisions of this section in lieu of § 4279.107.

(a) *Guarantee fee.* The guarantee fee will be paid to the Agency by the lender and is nonrefundable. The fee may be passed on to the borrower. Issuance of the Loan Note Guarantee is conditioned on payment of the guarantee fee by closing. The guarantee fee will be the percentage specified in paragraphs (a)(1) or (a)(2) of this section, as applicable, unless otherwise specified by the Agency in a notice published in the FEDERAL REGISTER, multiplied by the principal loan amount multiplied by the percent of guarantee and will be paid one time only at the time the Loan Note Guarantee is issued.

(1) For loans receiving a 90 percent guarantee, the guarantee fee is three percent.

(2) For loans receiving less than a 90 percent guarantee, the guarantee fee is:

(i) Two percent for guarantees on loans greater than 75 percent of total project costs.

(ii) One and one-half percent for guarantees on loans of greater than 65 percent but less than or equal to 75 percent of total project costs.